**Cooperative Research and Development Agreement   
Between   
San Francisco State University   
and [insert company name], Inc.**

**Article 1. INTRODUCTION**

This Cooperative Research and Development Agreement (CRADA), effective upon the date executed by the last party to sign (“Effective Date”), is entered into by and between the Trustees of the California State University, which is the State of California acting in an educational capacity, on behalf of San Francisco State University (hereinafter referred to as “SF STATE”), located at 1600 Holloway Avenue, San Francisco, California 94132 and [company name, Inc. (hereinafter referred to as “COMPANY”), a corporation organized under the laws of the State of [insert] and having a principal location of [insert address]. (SF STATE and COMPANY collectively, the “Parties”) The research and development project(s) which will be undertaken by each of the Parties in the course of this CRADA are detailed in the Research Plan which is attached as Appendix A.

**Article 2. DEFINITIONS**

As used in this CRADA, the following terms shall have the indicated meanings:

2.1 **"Background Invention"** means any invention of any Party conceived of outside this CRADA.

2.2 **"Cooperative Research and Development Agreement"** or **"CRADA"** means this Agreement, entered into by SF STATE and COMPANY.

2.3 **"CRADA Data"** means all recorded information first produced in the performance of this Agreement.

2.4 **"CRADA Invention"** means any invention conceived under this CRADA.

2.5 **"Invention"** means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

2.6 **"Project Representative"**  means the person(s) designated respectively by each Party in Appendix A to this CRADA to be responsible for the scientific and technical conduct of that Party in the performance of research under this CRADA.

2.7 **"Project Team"** means all personnel assigned to conduct the research designated in this Agreement.

2.8 **"Proprietary Information"** means confidential scientific, business, or financial information, which may embody trade secrets, whether in written, oral, graphic, electronic or physical form, including but not limited to scientific knowledge, know-how, processes, inventions, techniques, formulae, products, data, plans and software, which is not generally known to the public, developed exclusively at private expense, clearly identified as Proprietary Information, and provided by one Party (the “Disclosing Party”) to another party or the other parties (the “Receiving Party”) under this CRADA, except if such information:

2.8.1 was in the Receiving Party’s possession before receipt from the Disclosing Party; or

2.8.2 is or becomes a matter of public knowledge through no fault of the Receiving Party; or

2.8.3 is received by the Receiving Party from a third party without a duty of confidentiality; or

2.8.4 is disclosed by the Disclosing Party to a third party without a duty of confidentiality on the third party; or

2.8.5 is independently disclosed by the Receiving Party with the Disclosing Party’s prior written approval; or

2.8.6 is independently developed by the Receiving Party without reference to information disclosed hereunder.

2.9 **"Research Products"** means equipment and other tangible materials, excluding CRADA Data, CRADA Inventions, and copyrightable works that are first produced in the performance of this CRADA.

**Article 3. RESEARCH PLAN**

3.1 **Research Plan and Changes.** The description, duration and objectives of the research to be conducted under this CRADA are detailed in the Research Plan, attached and incorporated as part of this CRADA at Appendix A. Specific elements of Appendix A may, upon mutual agreement of the Parties, be revised from time to time during the term of this CRADA, and such revisions neither require nor constitute an amendment to this CRADA. The research under this CRADA shall be performed on a reasonable efforts basis.

3.2 **Reviews and Reports**. Periodic conferences shall be held by SF STATE and COMPANY to review progress under the Research Plan. Parties shall exchange formal written interim progress reports and final reports pursuant to the schedule set forth in Appendix A.

3.3 **Project Representatives. The Project Representatives on behalf of each Party for purposes of this CRADA are identified in Appendix A.**

3.4 **Project Team.** While at SF STATE the Project Team shall pursue its activities according to the work schedule and under the conduct regulations that apply to SF STATE employees. SF STATE warrants and represents that all individuals participating in the Research Project on itsbehalf are under an obligation to assign all rights to any Invention they may develop to SF STATE. COMPANY warrants and represents that all individuals participating in the Research Project on its behalf are under an obligation to assign all rights to any Invention they may develop to COMPANY. Individuals selected to work at another Party’s laboratory will be subject to the acceptance by that other Party, which acceptance shall not be unreasonably withheld, and shall pursue their activities in accordance with the work place and safety policies and regulations of that other Party.

3.5 **Company Information and Changes.**

3.5.1 COMPANY has reviewed and certifies the accuracy of the information contained in Appendix A. COMPANY agrees to notify SF STATE within thirty (30) days if any material change occurs relevant to the information in Appendix A.

3.5.2 COMPANY agrees to notify SF STATE within thirty (30) days should it become subject to the control of a foreign company or government at any time during this Agreement.

**Article 4. FINANCIAL OBLIGATIONS**

4.1 **SF STATE and COMPANY Contributions.** Each Party's contributions to the CRADA are listed in Appendix A. Payment schedules and budgets, if applicable, are also indicated in Appendix A.

**Article 5. TITLE TO EQUIPMENT**

5.1 **Equipment.** Equipment purchased by SF STATE with funds provided under this CRADA shall be the property of SF STATE. Equipment purchased by COMPANY with funds provided under this CRADA shall be the property of COMPANY. A Party may loan equipment to another Party pursuant to a written agreement which, among other terms mutually agreed to by the Parties, provides that: (a) the loaned equipment shall remain the property of the loaning Party unless the Parties agree in writing on some other disposition; (b) the loaned equipment will be returned to the loaning Party at its expense and risk as soon as practical after the expiration or termination of the Agreement, and (c) the Party that is the recipient of loaned equipment shall be responsible for maintaining the equipment during the loan period and all costs associated therewith.

**Article 6. TREATMENT OF PROPRIETARY INFORMATION**

6.1For purposes of this Agreement the term "INFORMATION" shall mean any and all information, know‑how, data, technical and non‑technical materials, designs, concepts, processes, product samples and specifications, financial or business information and other expertise, whether or not patentable, furnished by DISCLOSING PARTY to RECIPIENT, either directly or indirectly. A written summary of the Confidential Information shall be provided to the RECIPIENT by the DISCLOSING PARTY, whether the INFORMATION is oral or written. The written disclosure will provide further clarification of what is or is not claimed to be confidential. A lack of written clarification does not make any such disclosure non-confidential, however, any accidental and/or unintended disclosure of INFORMATION which was not provided to the RECIPIENT in written form within thirty days of such disclosure shall not be considered a breach of this document. Orally disclosed information in no way eliminates RECIPIENT from performance of this agreement in regards to purposeful disclosure of information expressed as confidential and falling within the bounds of this agreement. INFORMATION includes information provided in writing (including graphic material) or orally by DISCLOSING PARTY and/or observed by RECIPIENT or upon review of INFORMATION provided by DISCLOSING PARTY with the exception of:

1. information that at the time of disclosure had been previously published or was otherwise in the public domain through no fault of RECIPIENT;
2. information that becomes public knowledge after disclosure unless such knowledge is a breach of this Agreement;
3. information that was already in RECIPIENT’S possession prior to the time of disclosure as evidenced by written records kept in the ordinary course of business or by proof of actual use thereof;
4. information that was disclosed to the receiving party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the other party not to disclose such informa­tion to others.

6.2 Each party may disclose the INFORMATION to prosecute or defend litigation or to comply with applicable govern­mental regulations; *provided, however*, that if such party is required to make any such disclosure of INFORMATION it will to the extent practicable give reasonable advance notice to the other party of such disclosure requirement and will use its best efforts to secure confidential treatment of such INFORMATION required to be disclosed.

6.3 RECIPIENT, its employees, subsidiaries and affiliates agree to maintain in confidence the INFORMATION with the same degree of care RECIPIENT holds its own confidential and proprietary INFORMATION. RECIPIENT will not use the INFORMATION except to evaluate whether the parties have a mutual interest in pursuing a business and technical relationship. RECIPIENT will disclose the INFORMATION only to its officers and employees directly concerned with the evaluation of the INFORMATION. RECIPIENT will not disclose the INFORMATION to any third party nor will RECIPIENT use the INFORMATION for personal gain or any other purpose except as permitted by this Agreement. For purposes of this paragraph, "subsidiaries and affiliates" shall mean any corporation, firm, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with RECIPIENT.

6.4 Subject to the provisions of paragraph 6.1 hereof, all proprietary rights (including but not limited to patent rights, copyrights and/or trade secrets) in and to the INFORMATION shall remain the property of DISCLOSING PARTY.

6.5 Any INFORMATION provided by a DISCLOSING PARTY to a RECIPIENT pursuant to this Agreement is with the express understanding that neither party will be obligated to enter into any further agreement relating to the INFORMATION, and nothing in this Agreement shall be construed as granting any right, title, grant, option, ownership, interest in or license from one party to the other relating thereto.

6.6 Both parties agree that all Confidential information shared hereunder shall be treated in accordance with all federal regulations and laws regarding International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) including requiring that no confidential information shall be shared with foreign nationals not otherwise exempted from ITAR and/or EAR control.

6.7. Any disclosure made pursuant to this agreement shall be controlled by this agreement for a period of five (5) years from the execution date of this agreement.

**Article 7. INTELLECTUAL PROPERTY**

7.1 **DELETED.**

7.2 **Rights to Background Inventions.** No rights to Background Inventions are conveyed by this Agreement.

7.3 **Reporting Inventions and Other Responsibilities.** In addition to ensuring compliance with any of its own internal policies regarding intellectual property, each Party shall ensure that its Project Team members (a) promptly report any CRADA Inventions they conceive during this CRADA and (b) sign any documents necessary or desirable for the filing and prosecution of patent applications. If any Project Team member is not one of the Parties’ employees, the Party responsible for that Project Team member shall require that member to agree in writing to assist the Parties in fulfilling all of patent responsibilities under this CRADA. Each Party shall promptly report in writing to the other Parties each CRADA Invention disclosed to it. Such reports shall be maintained as Proprietary Information by the receiving Parties until such time as a patent or other intellectual property application claiming that CRADA Invention has been filed or the intellectual property has been released into the public domain.

7.4 **Treatment of CRADA Data**

7.4.1 **Ownership of Original Copies of CRADA Data.** SF STATE and COMPANY agree to exchange all CRADA Data their Project Team members develop in the performance of work under the Research Plan. Subject to this sharing requirement, the creating Party will retain the original copy of all CRADA Data created solely by its Project Team members. SF STATE shall retain the original copy of all CRADA Data created jointly by Project Team members of more than one Party and shall supply COMPANY with a copy of jointly created CRADA Data. COMPANY shall have access to the original copy of CRADA Data, upon request to SF STATE. SF STATE and COMPANY shall each have the right to use CRADA Data consistent with their obligations under this Agreement.

7.4.2 **Ownership of Copyrights of CRADA Data.** SF STATE and COMPANY may elect to register copyright on copyrightable CRADA Data and copyrightable works developed solely or jointly by their Project Team members. Solely developed copyrightable works shall be owned by that sole party and registration of such copyright shall be the sole responsibility and right of that sole Party, with no right to use, reproduce, make derivative works or exercise any other rights accruing to the non-creating Party unless defined explicitly hereunder. Jointly created copyrightable works may be registered by either Party as long as any Party registering such work alerts the other Party in writing at least thirty (30) days prior to such registration and allows the other Party to join in such registration, or, if the alerted Party does not join in such registration, the registering Party shall at least register the other Party as a co-owner and creator in such work. If any jointly owned copyright is infringed by a third party, both parties agree to use procedures for resolving such infringement substantially equivalent to those defined in 7.7 below with allowance for the applicability of specific terminology and industry best practice with respect to copyrights as opposed to patents. Any dispute of authorship or ownership of jointly owned or created works shall be determined by 10.3 below. When SF STATE and COMPANY register copyright or elect to exercise their copyright in copyrightable CRADA Data and works (rather than release them into the public domain), SF STATE and COMPANY shall affix the applicable copyright notice of 17 U.S.C. §§ 401, 402, or 403 and an acknowledgment of the scientific and technical contributions of the other Parties, as appropriate, to the work.

7.5 **Ownership of Research Products.** SF STATE and COMPANY agree to exchange samples of all Research Products. Research Products will be shared equally by the Parties. Subject to these sharing requirements, the Research Products created under this CRADA are the jointly owned property of the Parties as defined by 7.7 below. The Parties agree to make mutually acceptable arrangements for the disposition of unique or hard-to-replace Research Products.

7.6 **Publication and Disclaimer.** Except as provided in Article 6 and Sections 7.3 and 7.7, the Parties are encouraged to make publicly available the results of their research. Before one Party submits a paper or abstract for publication or otherwise discloses information about a CRADA Invention, CRADA Data, or Research Products, the other Parties shall be provided thirty (30) days to review the proposed publication or disclosure solely for the inclusion of proprietary or patentable information. Any party that identifies such information in the proposed publication may request its deletion or a delay in publication not to exceed sixty (60) days in order to take appropriate action to protect such information.

7.7 **Patenting and Ownership of CRADA Inventions**

7.7.1 **Joint CRADA Inventions.** Joint CRADA Inventions shall be jointly owned by the employing Parties of the inventors. The joint owners of a Joint CRADA Invention may but are not obligated to file U.S. Patent Applications on such Joint CRADA Inventions. If the Parties who own a Joint CRADA Invention mutually agree to file U.S. Patent Applications and/or foreign patent applications, they shall agree between or among themselves which owning Party shall be responsible for filing the application(s) in a timely manner. If only one of the joint owners wants to file for patent protection, that joint owner may file a U.S. Patent Application and/or foreign patent applications on the Joint CRADA Invention at its sole expense. In all instances, the non-filing Party shall reasonably cooperate and assist the filing Party in perfecting the patent application and the Filing Party shall have the right to control the prosecution of the U.S. and/or foreign Patent Application. The owning Party of a Joint CRADA Invention will grant the non-owning Party a research license to Joint CRADA Inventions with a right to grant nonexclusive research licenses to other nonprofit institutions to use Joint CRADA Inventions for educational and research purposes in their facilities. This research license shall not include any rights to make, sell or use Joint CRADA Inventions for commercial purposes or in lieu of purchase as a commercial product.

7.7.1.1 **Infringement of Joint CRADA Inventions.** In the event that SF STATE or COMPANY learns of infringement of potential commercial significance of any patent that is jointly owned under this CRADA, or to which COMPANY retains an option to license from SF STATE under Section 8 below, the knowledgeable party will provide the other (i) with written notice of such infringement and (ii) with any evidence of such infringement available to it (the "Infringement Notice"). During the period in which, and in the jurisdiction where, COMPANY has exclusive rights under this Agreement, neither SF STATE nor COMPANY will notify a third party (including the infringer) of infringement or put such third party on notice of the existence of any Patent Rights without first obtaining written consent of the other. Either Party shall have the right to terminate this Agreement immediately without the obligation to provide 30 days’ notice as set forth in Section 9.1 if the other Party notifies a third party of infringement or puts such third party on notice of the existence of any Patent Rights with respect to such infringement without first obtaining the written consent of the other party hereto. If one Party alerts the other to such infringement and the parties do not agree to a course of action within thirty (30) days, the two parties will use the dispute resolution procedures set forth in 10.1 below to determine the course of action hereunder. Both SF STATE and COMPANY will use their diligent efforts to cooperate with each other to terminate such infringement without litigation. If infringing activity of potential commercial significance by the infringer has not been abated within ninety (90) days following the date the Infringement Notice takes effect, COMPANY may institute suit for patent infringement against the infringer. SF STATE may voluntarily join such suit at its own expense, but may not thereafter commence suit against the infringer for the acts of infringement that are the subject of COMPANY’s suit or any judgment rendered in that suit. COMPANY may not join SF STATE in a suit initiated by COMPANY without SF STATE’s prior written consent. If, in a suit initiated by COMPANY, and if SF STATE is involuntarily joined as a party by a party other than by COMPANY, COMPANY will pay any costs incurred by SF STATE arising out of such suit, including but not limited to, any legal fees of counsel that SF STATE selects and retains to represent it in the suit.

If, within a hundred and twenty (120) days following the date the Infringement Notice takes effect, infringing activity of potential commercial significance by the infringer has not been abated and if COMPANY has not brought suit against the infringer, SF STATE may institute suit for patent infringement against the infringer. If SF STATE institutes such suit, COMPANY may not join such suit without SF STATE’s consent and may not thereafter commence suit against the infringer for the acts of infringement that are the subject of SF STATE’s suit or any judgment rendered in that suit.

Any recovery or settlement received in connection with any suit will first be shared by SF STATE and COMPANY equally to cover the litigation costs each incurred, and next shall be paid to SF STATE or COMPANY to cover any litigation costs it incurred in excess of the litigation costs of the other.

Any recovery in excess of litigation costs will be shared between the Parties if one Party initiates such suit as follows:

for any recovery other than amounts paid for willful infringement:

1. the non-initiating Party will receive fifteen percent (15%) of the recovery if they are not a party in the litigation and did not incur any litigation costs;
2. the non-initiating Party will receive twenty-five percent (25%) of the recovery if they are a party in the litigation, but did not incur any litigation costs;
3. the non-initiating Party will receive fifty percent (50%) of the recovery if they incurred any litigation costs in connection with the litigation; and

for any recovery for willful infringement, the Parties will receive fifty percent (50%) of the recovery each.

SF STATE and COMPANY agree to be bound by all determinations of patent infringement, validity, and enforceability (but no other issue) resolved by any adjudicated judgment in a suit brought in compliance with this section.

Each party will cooperate with the other in litigation proceedings instituted hereunder but at the expense of the party who initiated the suit, unless such suit is jointly prosecuted by the parties.

Any litigation proceedings will be controlled by the party bringing the suit, except that SF STATE may be represented by counsel of its choice in any suit brought by COMPANY.

7.7.2 **Sole CRADA Inventions.** Each Party shall retain title to any CRADA Invention conceived of solely by its employees or Project Team members. The owning Party of a Sole CRADA Invention may but is not obligated to file a U.S. and/or foreign Patent Application covering a Sole CRADA Invention. If the owning Party elects to file a patent application, it shall do so only after written notification of the other Party.

7.7.3 **Patent Expenses and Prosecution.** Except as provided for in section 7.7.1, 8.2 and 8.5, all of the expenses attendant to the filing, defense and maintenance of patent applications, including but not limited to attorneys fees and patent fees, shall be borne by the owner of a Sole CRADA Invention or jointly by the joint owners of a Joint CRADA Invention. The filing Party shall promptly provide the other Party with copies of Provisional Applications filed, Patent Applications filed and Office Actions bearing upon any Sole or Joint CRADA Invention.

**Article 8. LICENSING**

8.1 **Government’s Minimum Rights.** In the event funding for the activities of this CRADA is provided from federal sources then the Government of the United States of America shall retain a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced SF STATE Sole CRADA Inventions and SF STATE’s interest in Joint CRADA Inventions as stipulated by the Bayh-Dole Act.

8.2 **Sole SF STATE CRADA Inventions and Joint CRADA Inventions.** SF STATE hereby agrees to grant COMPANY an option to negotiate an exclusive or nonexclusive commercialization license to patents or patent applications on Sole SF STATE CRADA Inventions and to SF STATE’s interest in patents or patent applications on Joint CRADA Inventions. The exclusive or nonexclusive license shall be limited to fields of use defined by the subject matter of the Research Plan found in Appendix A of this CRADA. The license will (a) specify the scope of the license by fields of use, geographic territory, and/or markets; the duration of the license and royalties and other payments; (b) in the event of federal funding per 8.1, require that products manufactured for sale or use in the United States under the license will be manufactured substantially in the United States;; (c) with respect to any exclusive license granted to COMPANY, require COMPANY to pay all costs, including but not limited to patent and attorneys’ fees, incurred in connection with the filing, defense and maintenance of any patent or patent application on a Sole SF STATE CRADA Invention or to SF STATE’s interest in patents or patent applications on Joint CRADA Inventions; (d) reserve a patent license in favor of the United States Government, in accordance with Article 8.1, and (e) reserve for each Party a research license, in accordance with Article 7.7.1. Additional terms and conditions shall be added to all licenses consistent with applicable statutes and regulations. The royalty rates will be based on product sales and the rates conventionally granted in the field identified in the Research Plan for inventions with reasonably similar commercial potential. The royalty rates will also reflect the relative inventive contributions of the Parties to a Joint CRADA Invention.

8.3 **Exercise of License Option to Sole SF STATE CRADA Inventions.** The option to negotiate a license to Sole SF STATE CRADA Inventions, under Article 8.2, must be exercised by written notice mailed within sixty (60) days after SF STATE notifies COMPANY of such Sole Invention. The parties shall negotiate such license terms in good faith. If no license agreement is reached by the parties within one hundred and twenty (120) days (the negotiation period) of COMPANY’s notice to SF STATE of intent to license such sole invention, COMPANY shall lose this option hereunder. However, SF STATE cannot grant a license with equivalent terms to a third party for a period of one hundred and twenty (120) days after such time that the option was lost by COMPANY, unless COMPANY was unable to execute such license terms because it either determined not to move forward with such terms or was unable to pay for such license terms. After the expiration of one hundred and twenty (120) days of such negotiation period, SF STATE shall be free to license Sole SF STATE CRADA Inventions to others under any terms SF STATE shall deem fit with no recourse by COMPANY hereunder.

8.4 **Exercise of License Option to Joint CRADA Inventions.** The option to negotiate a license to Joint CRADA Inventions, under Article 8.2, must be exercised by written notice mailed within sixty (60) days after the date COMPANY receives notice that a patent will be allowed on the Joint CRADA Invention by the PTO. Exercise of this option by COMPANY initiates a negotiation period that expires in four (4) months from the date COMPANY receives notice of the USPTO’s or other, foreign patent office’s decision. If an agreement between the Parties has not been reached within this four (4) month period, the negotiation period shall be deemed to have ended, unless both parties agree in writing to extend the negotiation period. If no license is executed during the negotiation period or if the option COMPANY exercises is for a nonexclusive license, SF STATE shall be free to license its interest in patent or patent applications on Joint CRADA Inventions to others.

**Article 9. TERMINATION**

9.1 **Notice.** SF STATE and COMPANY each have the right to terminate this Agreement upon thirty (30) days written notice to the other Party.

**Article 10. DISPUTES**

10.1 Any dispute arising under the terms of this Contract which is not resolved within a reasonable period of time by authorized representatives of the COMPANY and SF STATE shall be brought to the attention of the Chief Executive Officer (or designated representative) of the COMPANY and the Chief Business Officer (or designee) of The California State University (CSU) for joint resolution. At the request of either party, The CSU shall provide a forum for discussion of the disputed item(s), at which time the Vice Chancellor, Business and Finance (or designated representative) of The CSU shall be available to assist in the resolution by providing advice to both parties regarding The CSU contracting policies and procedures. If resolution of the dispute through these means is pursued without success, either party may seek resolution employing whatever remedies exist in law or equity beyond this Agreement. Despite an unresolved dispute, the Parties shall continue without delay to perform their responsibilities under this Agreement.

**Article 11. LIABILITY**

11.1 **Indemnification**

11.1.1 General Indemnity

COMPANY agrees to indemnify, defend and save harmless SF STATE, The California State University, the State of California, and the officers, agents and employees of each of them from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by COMPANY in the performance of this Agreement.

SF STATE agrees to indemnify, defend and save harmless COMPANY, and its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by SF STATE in the performance of this Agreement.

11.1.2 **Use of Research.** COMPANY shall indemnify and hold harmless the SF STATE, the State of California, the California State University and their officers, agents, and employees for any loss, claim, damage, or liability of any kind arising out of the use of SF STATE’s research and technical developments by COMPANY or any party acting on behalf of or with the authorization of COMPANY or arising out of any use, sale or other disposition of products based on or using or incorporating SF STATE’s technical developments by COMPANY or others acting on its behalf or with its authorization. SF STATE shall indemnify and hold harmless COMPANY and their officers, agents, and employees for any loss, claim, damage, or liability of any kind arising out of the use of COMPANY’s research and technical developments by SF STATE or any party acting on behalf of or with the authorization of SF STATE or arising out of any use, sale or other disposition of products based on or using or incorporating COMPANY’s technical developments by SF STATE or others acting on its behalf or with its authorization.

11.3 **Force Majeure.** No Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party, which causes such Party to be unable to perform its obligations under this Agreement (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civic disturbance or disobedience, strikes, labor dispute, or failure, threat of failure, or sabotage of SF STATE or COMPANY facilities, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure event, the Party unable to perform shall promptly notify the other Party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

11.4 **NO WARRANTY.** THE PARTIES MAKE NO WARRANTY, EXPRESS OR IMPLIED, IN FACT OR ARISING BY OPERATION OF LAW, WRITTEN OR ORAL, AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITIONS OF THE RESEARCH OR ANY INVENTION OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FREEDOM FROM INFRINGEMENT OF RIGHTS OF THIRD PARTIES OF THE RESEARCH OR ANY INVENTION OR PRODUCT.

**Article 12. MISCELLANEOUS**

12.1 **Governing Law.** The construction validity, performance and effect of this Agreement for all purposes shall be governed by the laws of the State of California.

12.2 **Entire Agreement.** This Agreement, together with Appendix A and any other changes set forth in Appendix B (optional), constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

12.3 **Headings.** Titles and headings of the Sections and Subsections of this Agreement are for the convenience of references only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

12.4 **Amendments.** If one Party desires a modification in this Agreement, the Parties shall, upon reasonable notice of the proposed modification by the Party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the Parties hereto by their representatives duly authorized to execute such amendment.

12.5 **Assignment.** Neither this Agreement nor any rights or obligations of any Party hereunder shall be assigned or otherwise transferred by one Party without the prior written consent of the other Parties.

12.6 **Notices.** All notices pertaining to or required by this Agreement shall be in writing and shall be directed to the signatories.

12.7 **Independent Contractors.** The relationship of the Parties to this Agreement is that of independent contractors and not as agents of each other or as joint venturers or partners. Each Party shall maintain sole and exclusive control over its personnel and operations.

12.8 **The Use of Name or Endorsements.** COMPANY shall not use the name of SF STATE on any advertisement, product or service which is directly or indirectly related to either this Agreement or any patent license or assignment agreement which is implemented pursuant to this Agreement. By entering into this Agreement SF STATE does not directly or indirectly endorse any product or service provided, or to be provided, by COMPANY its successors, assignees, or licensees. COMPANY shall not in any way imply that this Agreement is an endorsement of any such product or service by SF STATE.

12.9 **Duration of the Agreement.** It is mutually recognized that the duration of this project cannot be rigidly defined in advance, and that the contemplated time periods for various phases of the Research Plan are only good faith guidelines subject to adjustment by mutual agreement to fit circumstances as the Research Plan proceeds. In no case will the term of this CRADA extend beyond the term indicated in the Research Plan, which term shall in no event extend for a period exceeding five (5) years from the unless it is revised in accordance with Section 12.4.

12.10 **Full Execution.** COMPANY acknowledges that this CRADA is not an offer to enter into a contract and cannot unilaterally be made binding. No contract exists until this CRADA is fully executed and signed by all parties.

12.11 **Survivability**. The provisions of Articles 2, 4, 5, 6, 7, 8, 10.1, 11, 12.1, 12.8, and 12.12 shall survive the termination of this CRADA.

12.12 **Export of Technical Data.** COMPANY agrees to comply with United States Export Control Laws and Regulations, including but not limited to the International Traffic in Arms Regulations (22 C.F.R. Part 121 et seq.) and the Department of Commerce Export Regulations (15 C.F.R. part 770 et seq.). Throughout the term of this CRADA, COMPANY agrees that no technical data created under this Agreement that is controlled by U.S. export laws and regulations shall be disclosed to any foreign national, foreign firm, or foreign country, including foreign nationals employed by COMPANY, unless COMPANY first obtains the appropriate licenses or approvals, if necessary.

12.14 **Classified Information.** No Party will disclose information that is classified by the United States Government to another Party under this CRADA.

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be executed by their duly authorized representatives as follows:

**AGREED TO:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COMPANY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Print name of signatory

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Date

Mailing Address for Notices and Informational Copies:  
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SAN FRANCISCO STATE UNIVERSITY

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Stephen C. Smith, Director of Procurement and Contracts

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Date

Mailing Address for Notices and Informational Copies:

Attention:

Associate Vice President for Research and Sponsored Programs  
San Francisco State University  
1600 Holloway Avenue, ADM 471  
San Francisco, CA 94132

**APPENDIX A  
THE RESEARCH PLAN**

**Studies to be carried out by [insert faculty name]**

Insert Aims

Insert Timeline and Milestones

Insert Budget